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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL H. YATES,
JOLENE K. YATES,
NANCY SLATTEN as TRUSTEE for
MICHAEL HALL YATES TRUST,
ATHENE ANNUITY AND LIFE COMPANY,
AN IOWA CORPORATION,
STATE OF CALIFORNIA FRANCHISE
TAX BOARD,
UNITED STATES DEPARTMENT OF
EDUCATION,
GENERAL ELECTRIC CAPITAL CORP.
KIRK C. WENTLAND,
SAN JOAQUIN COUNTY, and
CAVALRY INVESTMENTS LLC

Defendants.

) Case No.

) **COMPLAINT TO REDUCE**
) **ASSESSMENTS TO JUDGMENT AND**
) **FORECLOSE FEDERAL TAX LIENS**

INTRODUCTION

1. This is a civil action timely brought by the United States to reduce to judgment outstanding federal tax liabilities assessed against Defendants Michael H. Yates and Jolene K.

1 Yates and to foreclose federal tax liens on real property located in San Joaquin County,
2 California.

3 2. This action is commenced pursuant to 26 U.S.C. §§ 7401 and 7403 at the
4 direction of the Attorney General of the United States and with the authorization and request of
5 the Chief Counsel of the Internal Revenue Service (the “Service”), a delegate of the Secretary of
6 the Treasury of the United States.

7 **JURISDICTION AND VENUE**

8 3. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and
9 1345, and 26 U.S.C. § 7402.

10 4. Venue properly lies in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and
11 1396 because it is the district where the liability for the taxes at issue accrued, where the
12 taxpayer defendants reside, and where the property at issue is located.

13 5. Intra-district venue is proper in the United States District Court sitting in
14 Sacramento pursuant to Local Rule 120(d) because the taxpayers reside in San Joaquin County
15 and the property at issue is located in San Joaquin County.

16 **DEFENDANTS**

17 6. Defendant Michael H. Yates (“Mr. Yates”) is an adult individual residing in this
18 judicial district. Mr. Yates is named as a defendant in this action because the IRS assessed
19 federal income taxes against him, which remain unpaid, and because he has an interest in the real
20 property at issue.

21 7. Defendant Jolene K. Yates (“Ms. Yates”) is an adult individual residing in this
22 judicial district. Ms. Yates is named as a defendant in this action because the IRS assessed
23 federal income taxes against her, which remain unpaid, and because she has an interest in the real
24 property at issue.

8. Defendant Nancy Slatten is named as party to this action pursuant to 26 U.S.C. § 7403(b) because she may claim an interest in the real property at issue.

9. Defendant Athene Annuity and Life Company, an Iowa Corporation (“Athene”) is named as party to this action pursuant to 26 U.S.C. § 7403(b) because it may claim an interest in the real property at issue.

10. The State of California Franchise Tax Board is named as party to this action pursuant to 26 U.S.C. § 7403(b) because it may claim an interest in the real property at issue.

11. The United States Department of Education is named as party to this action pursuant to 26 U.S.C. § 7403(b) because it may claim an interest in the real property at issue.

12. General Electric Capital Corporation is named as party to this action pursuant to 26 U.S.C. § 7403(b) because it may claim an interest in the real property at issue.

13. San Joaquin County California is named as party to this action pursuant to 26 U.S.C. § 7403(b) because it may claim an interest in the real property at issue.

THE SUBJECT PROPERTY

14. This action seeks to foreclose upon one parcel of real property owned jointly by defendants Mr. Yates and Ms. Yates.

15. The property is Mr. Yates’ and Jolene Yates’ personal residence located at 932 Interlaken Drive, Lodi, California 95242 (“the Lodi Property”).

16. The Lodi Property is more particularly described as follows:

Lct eighty-two (82), of Tract No. 2105 SUNWEST UNIT NO. 8, according to the official Map thereof, filed for record July 22, 1987 in Vol. 28 of Maps and Plats, page 38, San Joaquin County Records.

17. Mr. Yates and Ms. Yates first acquired the Lodi property via grant deed on September 27, 1991.

18. In or around July 2008, Mr. Yates and Ms. Yates transferred title to the Lodi Property to Verna L. George.

19. In or around November 2010, Verna L. George transferred title to the Lodi Property back to Mr. Yates and Ms. Yates.

MR. YATES' AND MS. YATES' TAX LIABILITIES AND LIENS

20. On the dates detailed below, a delegate of the Secretary of the Treasury made timely assessments for unpaid individual income taxes, penalties, and interest against Mr. Yates and Ms. Yates for the 2001, 2009–2013, and 2015 tax years as follows:

Tax Period	Assessment Date	Type of Assessment ¹	Amount Assessed ²	Unpaid Balance Plus Accruals as of December 16, 2019
2001	10/13/2008	T	\$25,881.00	\$65,760.96
		I	\$15,292.50	
		T	\$2,717.00	
		I	\$1,949.25	
	09/09/2013	I	\$11,524.74	
2009	11/22/2010	T	\$6,870.00	\$8,676.94
		I	\$148.18	
	09/13/2013	I	\$659.90	
2010	06/25/2012	T	\$16,646.00	\$21,907.39
		I	\$729.66	
	09/09/2013	I	\$790.13	
2011	11/26/2012	T	\$3,810.00	\$5,087.97
		I	\$70.92	
	09/09/2013	I	\$96.24	
2012	11/18/2013	T	\$8,941.00	\$14,436.52
		I	\$160.89	
	09/26/2016	T	\$2,198.00	
2013	06/02/2014	T	\$21,104.00	\$28,173.89
		ETP	\$178.00	
		FPTP	\$211.04	
		I	\$83.42	
	07/11/2014	FC	\$44.00	
	05/02/2016	I	\$1,256.55	
		FPTP	\$4,583.22	

¹ T=Tax Assessed, ETP = Estimated Tax Penalty, FPTP=Failure to Pay Tax Penalty, I = Interest, FC=Fees and Collection Costs, LFP=Late Filing Penalty

2015	11/28/2016	T ETP FPTP I	\$29,910.00 \$539.00 \$1,196.40 \$751.27	\$36,246.24
Total				\$180,289.91

Table 1: Michael H. Yates and Jolene K. Yates Assessed Income Taxes, Penalties, and Interest

21. Mr. Yates and Ms. Yates submitted a Collection Due Process (CDP) request to the IRS on April 29, 2014, and the IRS issued a Notice of Determination on October 3, 2014, thus tolling the statute of limitations to collect for at least 187 days. 26 U.S.C. §§ 6330(e).

22. Mr. Yates and Ms. Yates filed a bankruptcy petition on February 28, 2017 and were granted discharge on June 27, 2017. *See generally*, Docket for Case, *In re Yates*, 2:17-bk-21302, E.D. Cal, thus tolling the statute of limitations for at least 302 days. 26 U.S.C. § 6503(h).

23. Mr. Yates and Ms. Yates refused or neglected to pay the assessed sums described in paragraph 20 upon the IRS giving notice and demanding payment.

24. As a result of Mr. Yates' and Ms. Yates' failure to pay the assessments described in paragraph 20, tax liens arose in favor of the United States upon all property and rights to property belonging to Mr. Yates and Ms. Yates as of the date of each assessment pursuant to 26 U.S.C. §§ 6321–6322.

25. To provide notice of the statutory liens under 26 U.S.C. § 6323, the IRS recorded the following Notices of Federal Tax Liens (“NFTL”) regarding the tax assessments described in paragraph 20 with the appropriate recording office in San Joaquin County, California:

Tax Period(s)	Date Recorded	Instrument Number
2001	10/09/2018 (originally filed 06/28/2010)	2018-111730
2009, 2010, 2011, 2012	04/21/2014	2014-038541
2012	10/09/2018	2018-111734
2013	07/14/2014	2014-068504
2015	12/26/2017	2017-150557

Table 2: NFTLs filed against Mr. Yates and Ms. Yates in San Joaquin County, California

26. The tax liens arising from the assessments described in paragraph 20 have priority over all interests in the Subject Property acquired after the attachment of the tax liens, subject to the provisions of 26 U.S.C. § 6323.

MR. YATES' AND MS. YATES' TAX LIABILITY AFTER THEIR 2017 BANKRUPTCY

27. As described in paragraph 22, *supra*, Mr. Yates and Ms. Yates filed a bankruptcy petition on February 28, 2017 and were granted a discharge on June 27, 2017.

28. As a consequence of the discharge, Mr. Yates and Ms. Yates were released from personal liability for assessments made with respect to tax years 2001, 2009, 2010, 2011, and 2012.

29. Mr. Yates' and Ms. Yates' discharge did not discharge the United States' tax liens described in paragraph 25. *See Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991); *In re Isom*, 901 F.2d 744, 745 (9th Cir. 1990). The United States tax liens for the tax years 2001, and 2009–2013 and 2015 remain attached to the Lodi Property.

30. Despite timely notice and demand for payment of the above-described assessments and penalties, Mr. Yates and Ms. Yates have neglected, failed, or refused to fully pay the assessments made against them.

31. As of December 16, 2019, Mr. Yates and Ms. Yates owed \$64,420.13 to the United States on the assessments described in paragraph 20 for tax years 2013 and 2015. Since that time, assessments, interest, penalties, and statutory additions have continued to accrue as provided by law. These debts were not discharged in Mr. Yates' and Ms. Yates' bankruptcy. *See* 11 U.S.C. §§ 507(a)(8) and 523(a)(1).

32. As of December 16, 2019, the United States' properly recorded liens described in paragraph 25 secured a total liability of \$180,289.91. Since that time, interest, and statutory additions have continued to accrue as provided by law.

COUNT I

Reduce Federal Income Assessments against Michael H. Yates and Jolene K. Yates to Judgment for the 2013 and 2015 Tax Years.

33. The United States incorporates the preceding paragraphs by reference, as if fully set forth herein.

34. The United States is entitled to a judgment against Mr. Yates and Ms. Yates for \$64,420.13, which is the unpaid balance of the assessed amounts described in paragraph 20 for tax years 2013 and 2015, plus statutory interest and any other additions permitted by law accruing after December 16, 2019 until the date of payment.

COUNT II

Foreclose Federal Tax Liens on the Lodi Property

35. The United States incorporates the preceding paragraphs by reference, as if fully set forth herein.

36. Under 26 U.S.C. § 7403(c), the United States is entitled to a decree of sale of the Lodi Property, which is jointly owned by Mr. Yates and Ms. Yates. The sale is necessary for the United States to collect the assessments described in paragraph 20.

37. The tax liens arising from the assessments described in paragraph 20 have priority over all interests in the Lodi Property acquired after the attachment of the tax liens, subject to the provisions of 26 U.S.C. § 6323.

REQUEST FOR RELIEF

WHEREFORE, the United States respectfully requests that the Court:

A. Enter judgment in favor of the United States and against Michael H. Yates and Jolene K. Yates for unpaid federal income taxes for 2013 and 2015 in the amount of \$64,420.13, plus statutory interest and other additions accruing after December 16, 2019;

1 B. Order that the United States' federal tax liens for unpaid federal income taxes for
2 2001, 2009–2013 and 2015 be foreclosed upon the Lodi Property, that the Lodi Property be sold,
3 and that the proceeds from the sale be distributed to the United States and all other creditors in
4 their respective priority of liens and claims of all parties;

5 C. Order that, to the extent the proceeds from the sale of the real property fail to
6 satisfy the outstanding liabilities for tax years 2013 and 2015, a deficiency judgment be entered
7 against Michael H. Yates and Jolene K. Yates;

8 D. Award the United States its costs and such other relief as is just and proper.

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10 Dated: February 14, 2020

Respectfully Submitted,

11 RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

12 /s/ ALEX HALVERSON
13 Trial Attorney, Tax Division
U.S. Department of Justice
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